

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS: 06-0108**  
**Indiana Individual Adjusted Gross Income Tax**  
**For the Years 1995 through 2004**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Proposed Assessment of State Income Tax.**

**Authority:** IC 6-8.1-5-1(a); IC 6-8.1-5-1(b).

Taxpayers challenge the proposed assessment of Indiana individual income tax.

**STATEMENT OF FACTS**

Taxpayers – a husband and wife – failed to file state income tax returns for 1994 through 2004.

An audit examiner was assigned by the Department of Revenue (Department) to conduct an income tax audit investigation. The examiner sent certified letters to both taxpayers notifying them of the investigation. The signed receipts indicated to the Department that taxpayers had received the letters. One of the taxpayers responded by letter stating that she had never “sheltered” any income.

The taxpayers failed to provide information substantiating their claim that they did not receive taxable income. Therefore, the examiner prepared and issued a report based upon the “best information available.” The examiner obtained copies of federal returns and based the proposed assessments on those returns. The amount of adjusted gross income subject to Indiana tax was derived from the federal data. The yearly average adjusted gross income was determined by totaling the adjusted gross income for 1995 and for 1997 through 2003. The examiner then divided the total obtained by eight and applied the average for 1996 and 2004. The examiner allowed the standard \$2,000 exemption for both taxpayers.

Taxpayers challenged the assessments and the matter was assigned to a hearing officer. Taxpayers were contacted by letter dated June 26, 2006, in which the taxpayers were informed that a hearing would be held during which taxpayer would be provided an opportunity to explain the basis for their protest and to ask any questions they might have concerning the proposed assessments. The hearing was scheduled for Friday, July 28, at 10:00 AM. Taxpayers were provided the option of asking that the hearing be scheduled at a different time, were given the option of attending the hearing in person, and were given the option of participating in the hearing by telephone.

Taxpayers apparently found none of the options suitable because neither chose to participate in the July 28 hearing. This Letter of Findings is based upon the information contained within the Department's file.

## **DISCUSSION**

### **I. Proposed Assessment of State Income Tax.**

The Department prepared the proposed assessments of state income tax based upon the “best information available.” Taxpayers challenged the assessments.

The Department’s authority to propose the assessments is found at IC 6-8.1-5-1(a) which states as follows:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the *best information available* to the department. (*Emphasis added*).

Nonetheless, taxpayers have the right to challenge the assessments by filing a protest. However, it is up to the taxpayers to then provide an alternative and more accurate method of determining the tax liability. IC 6-8.1-5-1(b) provides in part that:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong *rests with the person against whom the proposed assessment is made*. (*Emphasis added*).

In this case, the Department relied upon federal data to determine the amount of state tax due. Taxpayers provided nothing to refute that data, declined to take part in the hearing, and now leaves the Department with no alternative but to sustain the original assessments and deny – such as it is – the taxpayers’ protest.

## **FINDING**

Taxpayers’ protest is denied.

DK/SP/JM – 060408